

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SHERMAN WILSON,

Plaintiff,

v.

OFFICER CILENTO, *City of Austin PD*,

Defendant.

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1:24-CV-1047-DII

ORDER

Before the Court is the report and recommendation from United States Magistrate Judge Dustin Howell concerning Plaintiff Sherman Wilson’s (“Plaintiff”) Complaint pursuant to 28 U.S.C. § 1915(e), (Dkt. 1). (R. & R., Dkt. 7). Pursuant to 28 U.S.C. § 636(b) and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, Judge Howell issued his report and recommendation on October 21, 2024. (*Id.*). A copy of the report and recommendation was sent by certified mail the same day. (Dkt. 8). As of the date of this order, Plaintiff has not filed objections to the report and recommendation.

Pursuant to 28 U.S.C. § 636(b), a party may serve and file specific, written objections to a magistrate judge’s proposed findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure de novo review by the district court. When no objections are timely filed, a district court can review the magistrate’s report and recommendation for clear error. *See* Fed. R. Civ. P. 72 advisory committee’s note (“When no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

In the report and recommendation, Judge Howell recommends that the Court dismiss with prejudice Plaintiff’s claim against the Austin Police Department as frivolous under 28 U.S.C. §

1915(e)(2). Because Plaintiff has not filed timely objections as to this recommendation, the Court reviews the report and recommendation for clear error. Having done so and finding no clear error, the Court accepts and adopts the report and recommendation as its own order. The Court will dismiss Plaintiff's claim against the Austin Police Department with prejudice.

Accordingly, the Court **ORDERS** that the Report and Recommendation of the United States Magistrate Judge, (Dkt. 7), is **ADOPTED**. Plaintiff's claim against the Austin Police Department is **DISMISSED WITH PREJUDICE** as frivolous under 28 U.S.C. § 1915(e)(2).

However, as to Plaintiff's claim against Defendant Officer Cilento, Judge Howell recommends that the Court allow this claim to continue. At the time that Judge Howell prepared the report and recommendation, Plaintiff had another active lawsuit in this Court involving the same incident. *See Wilson v. Officer A. Codero et al.*, 1:23-cv-1265-DAE. In his report and recommendation, Judge Howell recommends that this Court consolidate Plaintiff's claim against Officer Cilento into the -1265 case. However, on December 16, 2024, United States District Judge David Ezra entered an order in the -1265 case, dismissing Plaintiff's claims and closing the case. Accordingly, Plaintiff's claim against Officer Cilento will continue in this case before the undersigned.

To progress this litigation, the Court will order the Clerk of the Court to issue summons and commence service of process upon Officer Cilento. However, Plaintiff has not provided the Court with an address for Officer Cilento, which will necessarily frustrate the Court's issuance of a summons. Accordingly, the Court **ORDERS** that Plaintiff provide the address of Officer Cilento by **February 3, 2025**. Failure to do so will result in dismissal of this action.

Last, on October 28, 2024, Plaintiff filed a Motion for Release of Flash Drive. (Dkt. 9). In the motion, Plaintiff requests that the Court provide him with the flash drive filed with the Court that contains video exhibits are relevant to this case. (*Id.*). The Court **ORDERS** that Plaintiff's

Motion for Release of Flash Drive, (Dkt. 9), is **GRANTED**. The Clerk of the Court is directed to mail Plaintiff the flash drive containing the video exhibits he provided to the Court.

IT IS FINALLY ORDERED that the Clerk's Office mail a copy of this Order to Plaintiff via certified mail.

SIGNED on January 3, 2025.

A handwritten signature in blue ink, appearing to read "R. Pitman", is written above a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE